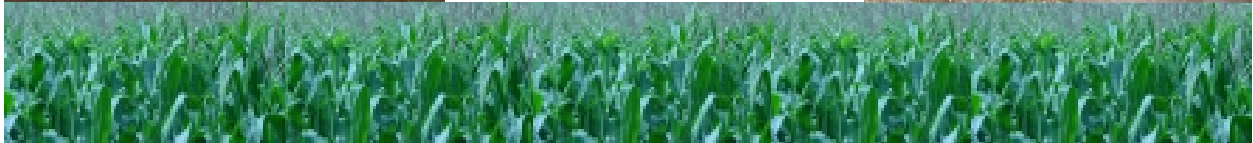


Livestock Facility Siting

s. 93.90 Wis. Stats and ATCP 51 Wis. Admin. Code

Annual Report May 2006 – April 2007



**Department of Agriculture, Trade, and
Consumer Protection**

**Division of Agricultural Resource Management
Land and Water Resource Bureau
Resource Planning Section**

Livestock Facility Siting Annual Report

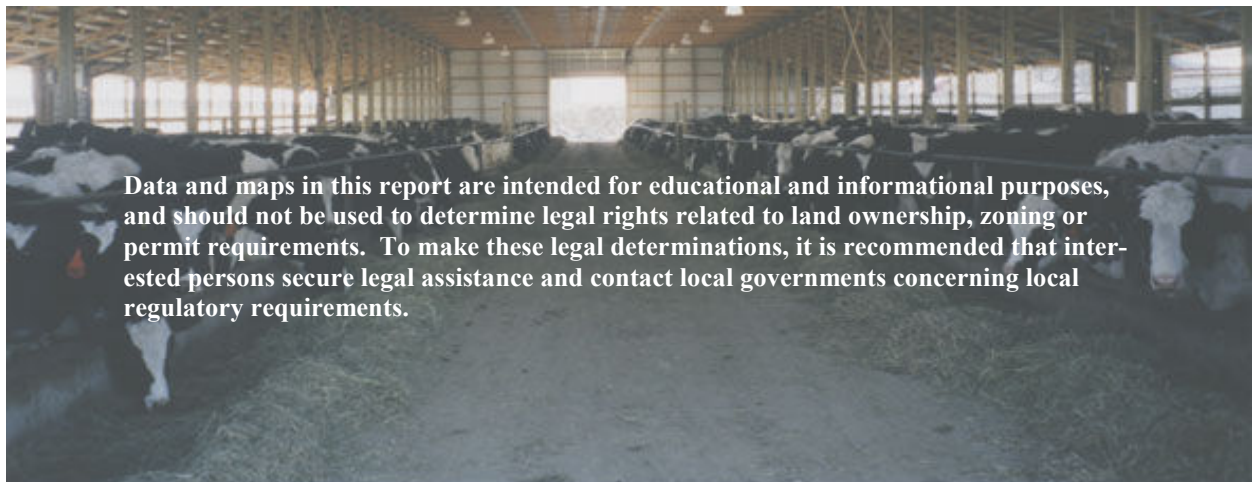
Table of Contents

Section 1	Executive summary.....	3
Section 2	The Livestock Facility Siting Law.....	4
Section 3	DATCP Outreach Efforts.....	6
Section 4	Local Implementation of the Siting Law.....	8
Section 5	Evaluation of the Siting Standards.....	18
Section 6	Future Trends and Proposed Improvements.....	19
Appendix A	Acronyms.....	21

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April 2007



Section 1

Executive Summary

April 12, 2007

The Department of Agriculture, Trade, and Consumer Protection (DATCP) is required to review the livestock facility siting standards under ATCP 51 at least annually during the first four years of the Livestock Facility Siting Law implementation. This is the first annual report on the siting standards. The objective of this report is to evaluate impacts of the livestock facility siting law. This analysis is focused on four main goals:

Goal 1: The department's role in the implementation of the siting law.

Goal 2: Local implementation of the siting law.

Goal 3: Evaluation of the siting standards.

Goal 4: Future trends and proposed improvements.

During the past year DATCP provided monthly reports to the Board of Agriculture, Trade and Consumer Protection (ATCP Board) tracking local implementation of the law, applications and decisions. The monthly updates and this report measure ATCP 51 against these statements of legislative intent:

- Protective of public health or safety.
- Cost-effective.
- Objective.
- Practical and workable.
- Based on available scientific information that has been subjected to peer review.
- Designed to promote the growth and viability of animal agriculture in this state.
- Designed to balance the economic viability of farm operations with protecting natural resources and other community interests.
- Usable by officials of political subdivisions.

There are fewer local siting ordinances in place today than prior to implementation of the siting law on May 1, 2006. This number will increase as more counties and towns enact siting ordinances. The size threshold triggering a local permit is becoming more consistent throughout the state at 500 animal units (AU).

Local adoption of the siting standards and faithful administration of the process can provide more predictability and streamline the permitting process. Siting permits are issued to producers within 4 months.

Many facts are presented in this report, yet there are limitations on drawing conclusions. It will take time for producers and local governments to fully appreciate the impact of the siting law. Currently, many counties and towns are still deciding if they wish to continue, or begin, regulating new and expanding livestock producers through a permitting system. Even in communities where ordinances have been enacted, relatively few siting applications have been submitted. Of these applications only three decisions were made.

Local understanding of the law is an evolving process. Several clarifications to the implementation process have been determined; however, new interpretations and unexpected challenges lay ahead. As more counties and towns adopt the siting standards, and more producers apply for permits, the ramifications of the law will become more apparent.

Section 2

The Livestock Facility Siting Law

The Livestock Facility Siting Law

The ability to site and expand livestock operations is essential to keeping Wisconsin's agricultural economy green and growing. Past conflicts concerning proposed locations for new livestock facilities and expansions of existing operations lead to a patchwork of local regulations across the state. The state legislature determined that a consistent statewide approach to regulating the growth of Wisconsin's livestock industry was needed.

The Livestock Facility Siting Law (Act 235 and s.93.90 Wis. Stats.) created a predictable framework for county and municipal decisions to site or expand livestock facilities. The Department of Agriculture, Trade and Consumer Protection (DATCP) was charged with developing and implementing the administrative rule. The siting rule (ATCP 51 Wis. Admin. Code) sets the standards local governments must use, as well as those that livestock operators must follow to receive a permit. The livestock facility siting regulations balance local control, community oversight, environmental protection and the need for a predictable siting process.

The livestock siting law and rule establish:

- New siting standards to protect air and water: animal units, odor management, waste and nutrient management, waste storage, and run-off management.
- A predictable permitting process, including a standard application and timelines.
- A new appeals process – the Livestock Facility Siting Review Board.

Local governments have the option to regulate the

Benefits of the law:

- A predictable process, which is critical for long-term business investments.
- The ability for local governments to plan and determine the landscape of their communities.
- A less contentious and less costly local permitting process.
- Livestock operations that meet air and water quality standards; and a competitive agricultural economy.

siting and expansion of livestock facilities but are not required to do so. Under the livestock facility siting law, local governments retain the authority to approve or deny siting and expansion requests. When a local government decides to regulate, they must do so through an ordinance that incorporates the state siting standards, application and process for making decisions. The decision to regulate remains a local determination; DATCP will not issue siting permits to producers.

The livestock facility siting rule became effective on May 1, 2006 (July 1, 2006 for facilities with less than 25 employees or less than \$5,000,000 in sales). A six month grace period was established for local governments with existing regulations to incorporate the siting standards in their local ordinances. During this period, local government could continue to issue siting permits as long as the state standards and process were used. After November 1, 2006, a local government could not regulate livestock facility siting unless it incorporated the state requirements into its ordinance. In addition, all ordinances adopted after November 1, 2006 cannot require a permit for any new or expanded livestock facility smaller than 500 animal units.

Livestock Facility Siting Review Board

The Livestock Facility Siting Review Board is authorized to review appeals of local decisions involving permit applications for new and expanded livestock facilities. Section 93.90 of the statutes states that the Board shall consist of seven members, appointed by the DATCP Secretary and subject to Senate confirmation, for staggered five-year terms. These members must include one member representing towns, one member representing counties, one member representing environmental interests, one member representing livestock farming interests, and 3 other members. The Board is attached to DATCP for administrative purposes, but exercises independent decision making authority.

The first meeting of the Board was held on May 30, 2006. At its June meeting, the Board adopted by-laws that govern the conduct of its business and establish procedures for review of cases.

The First Appeal

The Board has reviewed one appeal. Larson Acres, Inc. filed a request for review with the Board on August 30, 2006. The request for review challenged the Town of Magnolia (Rock County) for not making a completeness determination on the Larson Acres application to expand their heifer facility.

The Board meet on October 20, 2006 to consider jurisdictional questions related to Larson Acres' request for review. The Board decided, on a 6-1 vote, that they could not hear the case at this stage because the Town of Magnolia did not make a final decision to grant or to deny the siting application.

Livestock Facility Siting Review Board Members	
Jim Holte, Chair	Dunn County; beef producer; Wisconsin Farm Bureau Federation Board of Directors; nominated by Wisconsin Farm Bureau Federation; will serve until May 1, 2010.
Andy Johnson, Vice-Chair	Marathon County; Marathon County conservationist; nominated by Wisconsin Counties Association; will serve until May 1, 2008.
Bob Selk, Secretary	Dane County; Trout Unlimited; former Assistant Attorney General; nominated by Trout Unlimited and Midwest Environmental Advocates; will serve until May 1, 2009.
Fran Byerly	Barron County; Jennie-O Turkey Store; nominated by the poultry working group; will serve until May 1, 2010.
Dr. Jerome Gaska	Columbia County; Gaska Dairy Health Service; nominated by Wisconsin Veterinary Medical Association; will serve until May 1, 2009.
Lee Engelbrecht	Manitowoc County; Supervisor, Town of Two Creeks; Vice-President, Wisconsin Towns Association; nominated by Wisconsin Towns Association; will serve until May 1, 2007.
Bob Topel	Dodge County; Vice-chair, Foremost Farms USA; Town of Portland Plan Commission; dairy producer; nominated by Wisconsin Federation of Cooperatives; will serve until May 1, 2011.

Section 3 DATCP Information and Outreach Efforts

The siting law and rule is complex. The department has been heavily involved in numerous education efforts to help stakeholder groups understand the new requirements. From February to May 2006, DATCP staff delivered 42 outreach and training sessions primarily to local governments and producers. Since the rule was implemented on May 1, 2006, department staff has presented material on the siting rule at over 34 conferences, workshops and training sessions. Target audiences have included local government officials, agricultural consultants, producers and affiliated non-farm neighbors such as bankers and local citizens.

Outreach efforts can be divided into three categories: individual correspondences, formal education and assistance, and official publications. The actions summarized pertain to activities that occurred after the siting law went into effect last year.

Individual Correspondences

Since May 1, 2006 department staff has fielded over 150 individual inquiries from local governments (counties, towns, villages, and cities), engineering firms, crop consultants, attorneys, planners, farm lenders, industry groups, and private citizens. Initially there was a need to help the stakeholders understand the impact of the siting law on options to regulate livestock producers. Over time focus shifted to pointed questions related to implementing the rule at the local level. These questions helped shape the department's information and outreach efforts.

Formal Education and Assistance

Educating local governments and other impacted stakeholders has been a time-consuming effort. The varied regulatory landscape and understanding of how the siting rule impacts local conditions make it difficult to conduct large group trainings. Specialized assistance to smaller groups has

As other states develop concentrate animal feeding operation regulations interest in Wisconsin's livestock facility siting law expands beyond the state line. Officials from North Dakota and Missouri have consulted with department staff to discuss if concepts used in our state are transferable.

proven a more effective way of educating the public. The department partnered with industry groups, government and stakeholders to provide specific information and education.

Outreach for county government:

- Provided training and information about rule requirements to Adams, Barron, Brown, Buffalo, Burnett, Calumet, Chippewa, Dodge, Douglas, Fond du Lac, Florence, Green, Green Lake, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Marathon, Manitowoc, Pierce, Racine, Richland, Trempealeau and Waupaca counties.
- Participated in a Wisconsin Counties Association (WCA) statewide workshop where 70 people from 25 counties were present.
- Presented information at the Wisconsin Association of Land Conservation Employees annual conferences in 2006 and 2007. Land conservation department (LCD) staff discussed siting at 6 county listening sessions, and 3 training programs.

Outreach for town government:

- Provided assistance to educate officials and residents for towns located in Adams, Barron, Fond du Lac, Green, Iowa, Juneau, Marathon, Portage, Shawano, Trempealeau, Rock, Outagamie and Washington counties.
- Participated in five Wisconsin Towns Association (WTA) training programs, including one via the University of Wisconsin (UWEX) WisLine.

Education and outreach to state and regional organizations:

- Presented material and answered questions from the Bio-Gas working group, Dairy Business Association, Grow Wisconsin Livestock Initiative Panel, Professional Dairy Producers of Wisconsin (PDPW), and the Wisconsin Cattleman's Association Wisconsin Pork Producers.
- Education to over 150 lenders and producers, including the Rock County Agribusiness Association, Badgerland Farm Credit Services, and attendees at the Pigeon Falls State Bank Ag Appreciation Day.
- Training for UWEX agriculture agents, the

Wisconsin Association of Professional Agricultural Consultants and the Wisconsin County Code Administrators (WCCA).

- Presented and answered questions from the East Central Wisconsin Regional Planning Commission, Bay-Lake Regional Planning Commission and the Intercounty Coordinating Committee.
- Training for professionals at the Wisconsin Chapter of the American Planning Association and the Wisconsin Chapter of the American Society of Landscape Architects annual conferences.

Presentations on specific topics

- Seven odor standard workshops and demonstrations were held for the Wisconsin Federation of Cooperatives, PDPW large dairy herd meetings, Wisconsin Bankers Association, and Farm Technology Days.
- Specific training for county conservationists on the relationship of the siting law to other local regulations such as manure storage ordinances.
- Training for county Land Conservation Committee officials about adopting more stringent siting standards was given at the Wisconsin Land and Water Conservation Association's annual conference.
- The Wisconsin Bar held teleseminars concerning the legal requirements of ATCP 51 and the appeals process.

Technical Trainings Full-day technical trainings on the siting standards were held in Madison and Eau Claire. Approximately 150 private consultants, engineers, government staff and others from the private sector attended. All the training materials are posted on the livestock siting webpage.

Official Publications

Department staff wrote and distributed approximately 50 fact sheets and nine newsletter articles in response to frequently asked questions. Publications were directly distributed to impacted stakeholders, who further disseminated the information to members of their respective organizations. Articles have been published in the WCA and WTA magazines, the WCCA Decoder, and UWEX publications.

<http://livestocksiting.wi.gov>

The livestock siting website was developed to provide the public with easy access to the most current information about the livestock siting program. The website continues to be updated with new information. Many stakeholders have complimented the department for making a wide array of helpful information available online.

An online interactive map displaying local permit requirements was developed in partnership with the University of Wisconsin Soil Science Extension. The map is accessible through the siting webpage. This mapping capability will be enhanced once the department's ordinance database is linked to a web based GIS interface.

Section 4

Local Implementation of the Siting Law

Local Ordinances Regulating Siting

There are fewer siting ordinances today than there were before the livestock facility siting law went into effect on May 1, 2006. Incorporating the siting standards into local ordinances is not always a fast or efficient process.

Twelve ordinances met the requirements for grandfathering permit thresholds lower than 500 animal units (see Table 1). After November 1, 2006, no local government can regulate below 500 animal units. Manitowoc County enacted a 750 AU threshold, making it the only ordinance with an AU threshold above 500.

Thirty-six governments have adopted the siting standards and filed the enacted ordinances with DATCP as of April 12, 2007 (see Chart 1). Zoning ordinances with conditional use permit (CUP) requirements for new and expanded livestock operations are the most common, with 27 of the ordinances regulating this

Chart 1.

Ordinances adopted as of April 12, 2007

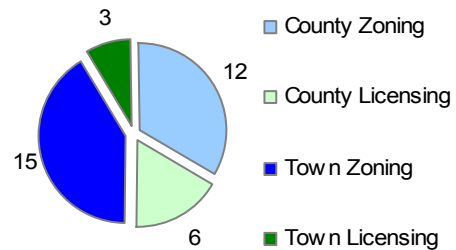
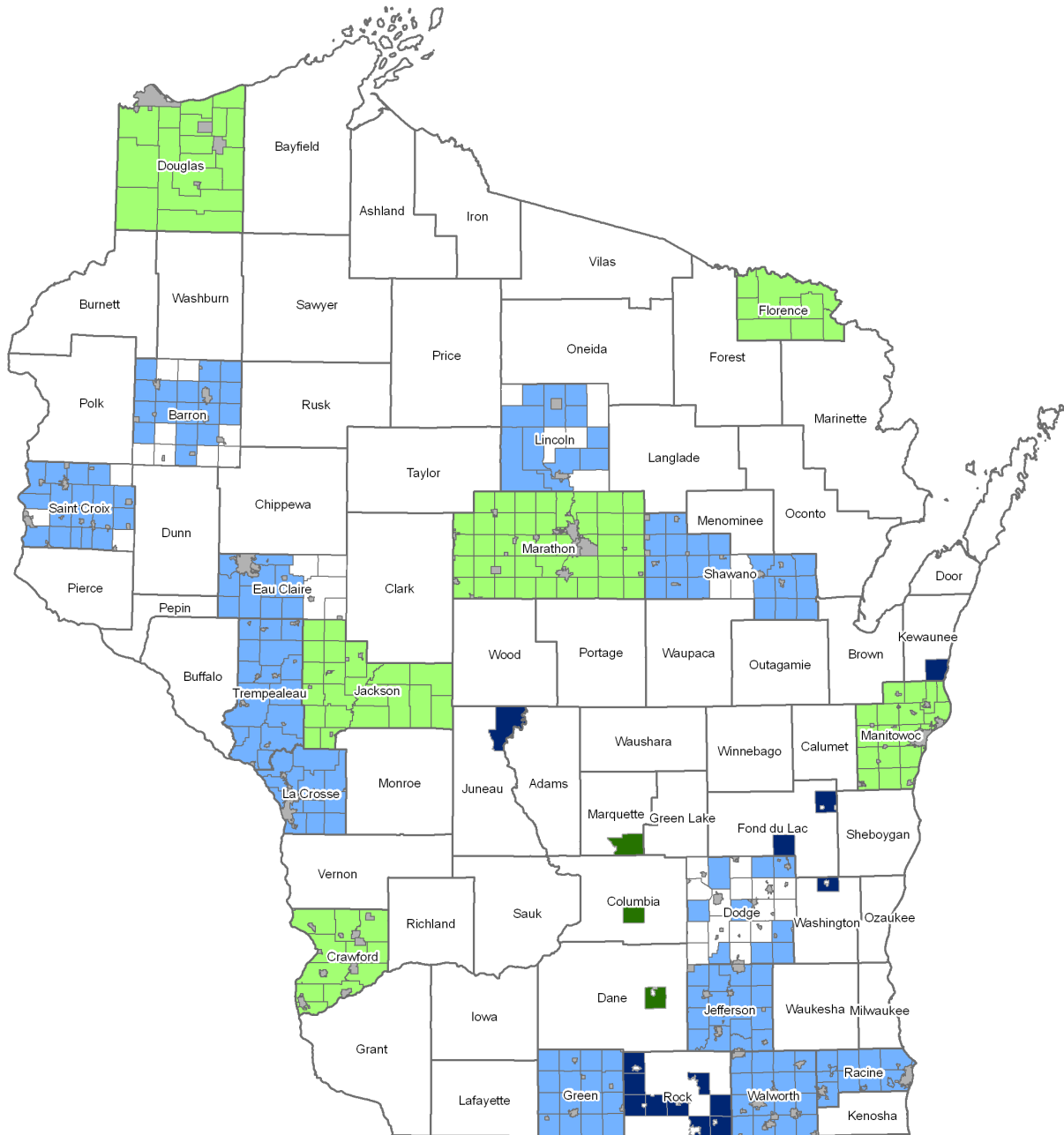


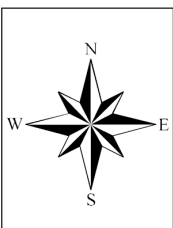
Table 1. Grandfathered AU Thresholds		
Ordinance Authority	Permit Type	AU Threshold
Eau Claire County	zoning	150
Jefferson County	zoning	150
Lincoln County	zoning	1 AU / acre
St. Croix County	zoning	>1 AU / acre or 500
Trempealeau County	zoning	300
Town of Armenia, Juneau County	zoning	300 animals or 1000 poultry
Town of Clinton, Rock County	zoning	>1 AU / acre
Town of Harmony, Rock County	zoning	>1 AU / acre
Town of Magnolia, Rock County	zoning	400
Town of Plymouth, Rock County	zoning	>1 AU / acre
Town of Rock, Rock County	zoning	>1 AU / acre
Town of Spring Valley, Rock County	zoning	200 or 500 AU by type

Note: Ordinances not shown in Table 1 have a AU threshold of 500, except Manitowoc County which has a AU threshold of 750.

Livestock Siting Ordinances



0 12.5 25 50 Miles



Town/Village/City

- Zoning
- Licensing

County

- Zoning
- Licensing

Boundaries

- County Boundaries
- Cities and Villages
- Towns

Map created by Justin Shell
 Created on April 13, 2007



way. The remaining nine regulate siting with a licensing ordinance. The map on page 9 displays the counties and towns that have adopted an ordinance and the areas regulated by that ordinance.

Licensing is a new method being used in Wisconsin to authorize livestock operations. Marathon, Manitowoc and several other counties enacted licensing ordinances because they desired to regulate producers county wide. For these counties a zoning ordinance was not feasible because the land within their jurisdiction is a mix of county zoning, town zoning and unzoned areas.

Tables 2 and 3 reflect local ordinance actions known by the department. Other ordinance activity may have occurred but was not reported to the department. ATCP 51 requires that within 30 days of enacting a siting ordinance local governments must file a copy with DATCP. This does not always occur. In many instances it is not until after the department contacts local officials that an ordinance is filed, sometimes upwards of seven months after being enacted.

Many towns which had previously required conditional use permits for livestock operations have not confirmed with DATCP whether they intend to modify their ordinances to continue this regulation.

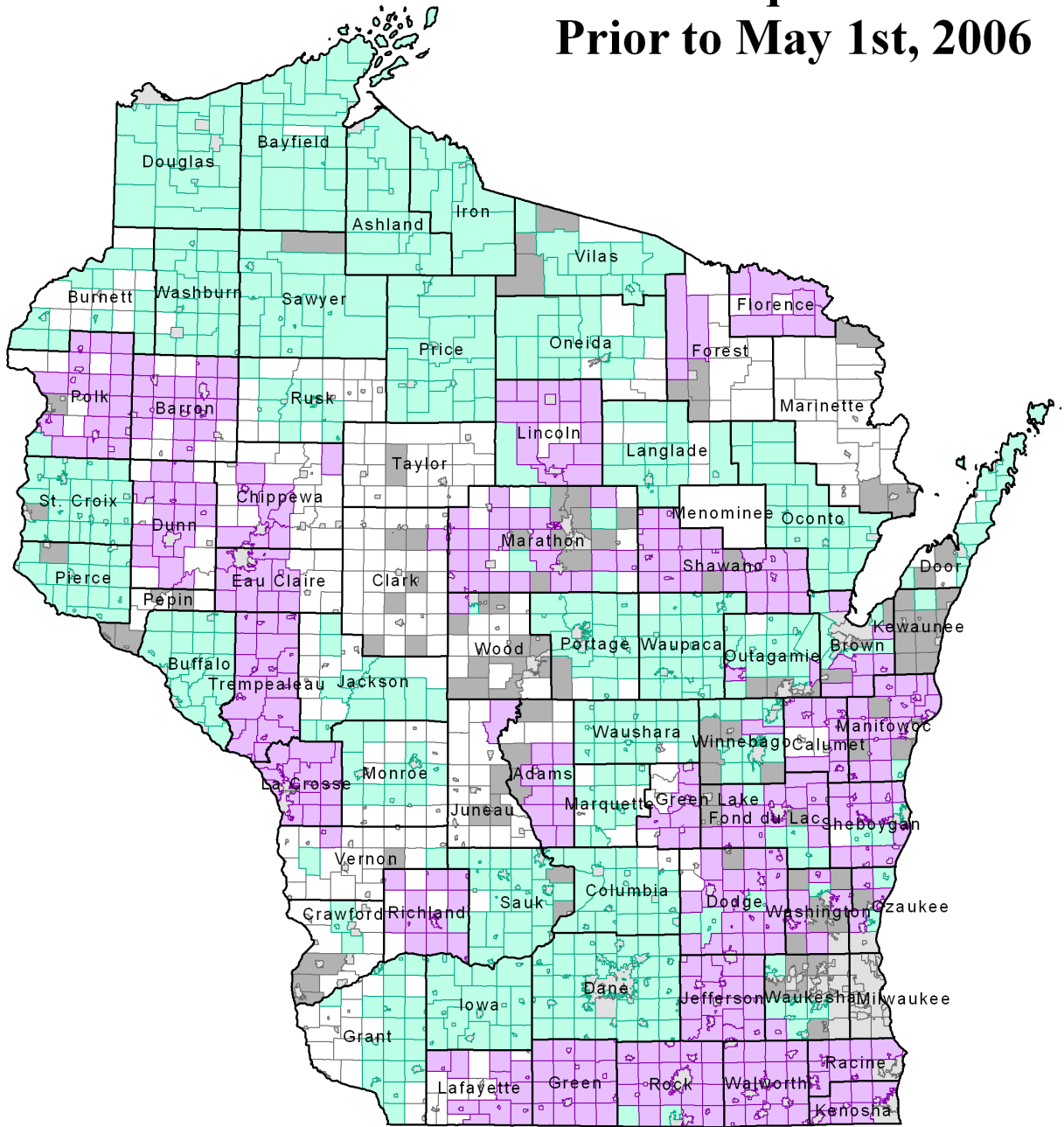
Table 2. County Ordinances Enacted

Zoning	Licensing
Barron County Dodge County Eau Claire County Green County Jefferson County La Crosse County Lincoln County Racine County St. Croix County Shawano County Trempealeau County Walworth County	Crawford County Douglas County Florence County Jackson County Manitowoc County Marathon County

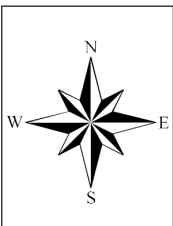
Table 3. Town Ordinances Enacted

Zoning		Licensing	
Dodge County Town of Portland Fond du Lac County Town of Byron Town of Marshfield Juneau County Town of Armenia Kewaunee County Town of Carlton Washington County Town of Kewaskum	Rock County: Town of Bradford Town of Clinton Town of Harmony Town of Magnolia Town of Plymouth Town of Rock Town of Spring Valley Town of Turtle Town of Union	Dane County Town of Cottage Grove Columbia County Town of Lowville Marquette County Town of Buffalo	

Local Livestock Facility Siting CUP Requirements Prior to May 1st, 2006



0 25 50 Miles



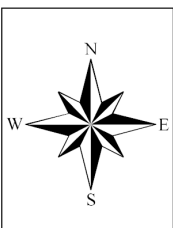
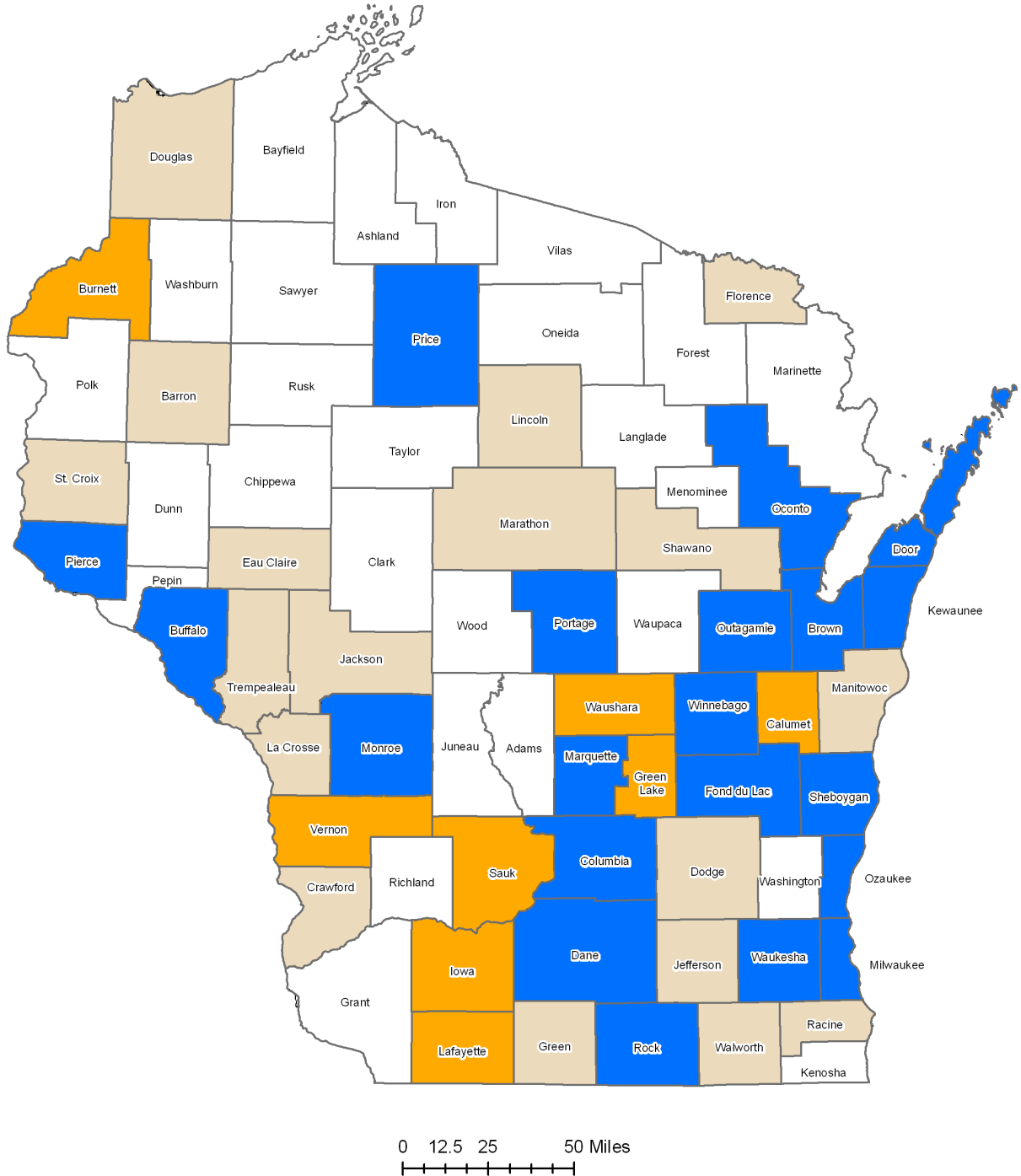
- County or Town Zoning: CUP Requirements
- County or Town Zoning: No CUP Requirements
- County or Town Zoning: Unknown CUP Requirements

- No Zoning
- City/Village

Map Updated: 04/12/2007



County Implementation of ATCP 51



ATCP 51 Implementation Status

- Not Adopting
- Considering
- Adopted
- Unknown

Cartographer: Lisa Schultz
Map Updated 04/11/2007



Considering or Developing Siting Ordinances

Several counties have confirmed that they are considering adopting a siting ordinance. Shown in the map on page 12, they include:

- Burnett, Calumet, Dunn, Green Lake, Iowa, Richland, Sauk, Vernon and Waushara.

Towns in the following counties are also considering adopting ordinances:

- Adams, Columbia, Calumet, Fond du Lac, Iowa, Kewaunee, Lafayette, Outagamie, Portage, Rock and Washington counties.

In addition, the City of Berlin (Waushara and Green Lake counties) is considering a siting ordinance.

Why Have Local Governments Decided Not to Adopt Siting?

Many counties and towns have decided not to incorporate the livestock siting standards into local ordinances. A substantial commitment by local government is necessary to operate the permitting process required by the siting law. Reasons for not adopting siting include the following:

- Town zoning is a reason some counties are deciding not to regulate siting. Counties such as Brown and Rock did not require siting permits in the past, however towns in their counties did. Often in this scenario the county elects not to adopt siting and leaves the decision to continue regulation up to individual towns.
- Towns that lack the expertise to effectively review siting applications and monitor compliance have decided to discontinue their CUP requirements.
- Some governments feel that the siting law removes their authority to deny applications. Politically, they would rather not regulate siting than be forced to give permission for large producers.
- Unless there are large farms in an area, local governments often do not see the benefit of continuing regulation or adopting a siting ordinance.

Model livestock siting ordinances To assist government implement the siting law at the local level the WCA and WTA, in consultation with the department, developed model zoning and licensing ordinances.

Counties That Will Not Adopt Siting Ordinances

The following counties confirmed that they will not be adopting siting ordinances: Brown, Buffalo, Columbia, Dane, Door, Fond du Lac, Marquette, Monroe, Oconto, Outagamie, Ozaukee, Pierce, Portage, Price, Rock (also the Town of Milton decided to no longer require a CUP for livestock operations), Sheboygan, Waukesha, and Winnebago.

Analysis of Local Ordinance Provisions

How the state siting standards are being incorporated into local ordinances varies throughout the state. The relevant language adopted into local ordinances ranges from total incorporation of the state law and rule by reference to verbatim adoption of the model ordinance. Properly incorporating the siting law into a new local ordinance is proving to be less problematic than revising an existing ordinance.

Revising an existing zoning ordinance usually requires changes to many sections. For example the CUP requirements are often cited in specific agricultural zoning district sections, definitions may be in an appendix, and the application procedures could be in yet another chapter. Some revised ordinances contain bits and pieces of relevant text from the siting rule scattered throughout the ordinance, however all the siting requirements are not present.

Minor inconsistencies between the siting law and local regulations have been noted in ordinances reviewed by the department. Examples include having multiple terms for livestock facilities that make it difficult to understand when a permit is required, and failure to include provisions for local recordkeeping. These types of inconsistencies are more common when siting standards are adopted into an existing ordinance.

Improperly adopting the ATP 51 requirements into local ordinances has occurred. This poses serious problems for local governments because it opens up the ordinance to challenges. Failure to include the permit approval process, different animal unit conversions, not specifying that permits are permanent and transferable, and failing to use definitions from ATP 51 are examples. Fixing significant conflicts will require revising the ordinance so that it properly adopts ATP 51.

More Stringent Standards

A number of ordinances include standards that are more stringent than the basic requirements in the siting law. Local governments do not appear to appreciate the need to justify more stringent regulation as required by the siting law. More stringent standards are not supported by scientific findings of fact. Nor do the ordinances explicitly point to public health and safety considerations to justify more stringent regulation. These are examples of more stringent provisions:

- Increased setback from property lines and non-agriculturally zoned districts.
- Livestock exclusions or restrictions based on size.
- Additional fees beyond \$1,000 (e.g. public hearing fees, requiring performance bonds for road damage).
- Increased nutrient management restrictions
- Enforcing other laws through a siting permit (e.g. groundwater).
- Shorter timeframes for repopulating a facility.
- Requiring closure plans for newly constructed waste storage facilities.
- Prohibiting dairy manure flush systems.

Potential for Invalidation of Ordinances Improperly Adopting ATCP 51

When an ordinance does not properly adopt the siting standards (or more stringent standards), there is a risk that a court may invalidate the entire ordinance, and permits issued under the ordinance authority. A severability clause may not be enough to save an ordinance. The WCA conducted a legal review and produced a memo on this topic. The department often does not see the text of local ordinances until after they are adopted, making it difficult for department staff to provide guidance on avoiding potential conflicts between the siting law and local ordinances.

Exclusive Agricultural Zoning (EAZ) and Siting

To facilitate implementation of the siting law, the department allowed changes to EAZ ordinances to incorporate siting requirements without the need for certification from the Land and Water Conservation Board (LWCB). For compliance with the Farmland Preservation Program, zoning ordinances that alter an EAZ district require LWCB recertification.

Conflicts with siting regulations have been found in EAZ ordinances being submitted for recertification. In many instances old CUP requirements were not altered to adopt the siting standards. The department is currently working with local governments to eliminate siting and EAZ conflicts in local ordinances.

Fees While some jurisdictions have smaller fees, typically ordinances use the maximum \$1,000 allowed by law. Some local estimates claim \$1,000 will barely cover the cost to review a siting application. For comparison, Brown County charges upwards of \$3,000 to review manure storage facility designs under their animal waste management ordinance.

No ordinances have been adopted that required LWCB recertification. This may change as more ordinances are enacted. The zoning ordinance revision for the Town of Lamartine in Fond du Lac County will likely be the first ordinance needing LWCB recertification. This is because the proposed siting requirements divide the towns existing EAZ district into three new EAZ districts, each with different limits on the size of livestock operations.

Siting Applications

The permitting procedures in the siting law can streamline the process and producers can legitimately expect to get permits in a reasonable time period. Permits have been issued in less than four months. One new livestock facility and two expansions have been permitted by local governments. No applications have been denied.

Central Sands Dairy was issued a local permit from the Town of Armenia (Juneau County) for a new 5,241 animal units (3,500 head) dairy. The application for local approval was filed in early May and granted by the end of August. DATCP and Department of Natural Resources (DNR) staffs helped the town work through local as well as state permit issues.

W. D. Hoard & Sons Co./Hoards Dairyman Farm received approval from the Jefferson County Land and Water Conservation Department to expand its dairy to 903 animal units. The facility is located within the City of Fort Atkinson's urban service area. The initial application, submitted on Sept. 15, 2006 was deemed incom-

plete because it did not adequately reflect changes necessary to bring existing animal lots into compliance with the runoff requirements. On November 10th, the revised application was determined to be complete, and the conditional use permit was approved on Nov. 27, 2006.

Larson Acres, Inc. was issued a permit by the Town of Magnolia (Rock County) to operate a 1,500 AU heifer facility. The initial application for town approval was in May 2002. After years of legal disputes, Larson submitted a new application on May 2, 2006 under the towns zoning ordinance. The completeness determination was appealed (see Section 2). On March 27, 2007 a permit containing seven conditions was issued by the town. Larson Acres may appeal the decision because of extra conditions attached to the CUP.

The siting law only requires local government to inform the department of final decisions to approve, deny or revoke applications. There is no require-

ment for notifying DATCP when an application is submitted. Additional applications may have been submitted to local governments. Table 4 summarizes the department's knowledge of applications that are currently being processed by counties and towns, or may be filed. This information was voluntarily provided to the department from local government officials, private consultants and producers, often in relation to a question about interpreting the rule requirements.

Fewer applications have been submitted than originally anticipated. Many counties and towns with existing ordinances that previously required a CUP for livestock facilities have not yet adopted the new siting requirements. As previously noted, some counties have delayed adopting siting ordinances. In addition some authorities decided not to grandfather lower animal unit thresholds. This means that fewer livestock operators are subject to local regulatory requirements for siting.

Table 4. Applications for Local Approval in Progress

Jurisdiction	Applicant(s)
Town of Portland, Dodge County	Dairy expansion of a WPDES operation
Jefferson County	Poultry expansion of a WPDES operation, potentially 4 farms in three counties will be considered related facilities Combined dairy-beef-sheep expansion to 500 AU 2 Dairy expansions 4 more applications expected
Town of Byron, Fond du Lac County	Dairy expansion
La Crosse County	Dairy expansion to 895 AU, no manure storage
Manitowoc County	Dairy expansion
Trempealeau County	Beef expansion from 400 to 700 AU with possibility to be >1,000 AU pending related facility determination Poultry expansion (turkey) Dairy expansion 297 to 400 AU

Local Implementation Challenges

Implementing siting ordinances is generally practicable and workable by counties and towns. That said, understanding the rule requirements and interpreting the law is presenting challenges. Counties are better equipped to handle the administration of a siting ordinance because they can capitalize on the strengths of their land conservation and zoning departments. Many towns do not have comparable technical expertise and must contract with either the county or a private consultant to adequately carry out their responsibilities as ordinance administrators.

ATCP 51's Relationship to Other Regulations

Any local permit requirements which can be used to deny a producer the ability to site an operation must comply with ATCP 51. When a siting ordinance is enacted, it changes the way county manure storage, animal waste (feedlot) ordinances and a few other local regulations are administered. The requirements of manure storage ordinances do not apply to producers that are required to obtain a siting permit when adding animals. Similarly, feedlot ordinances that previously required permits for expanding livestock facilities cannot be enforced unless the provisions of ATCP 51 have been incorporated. Even if counties and towns do not adopt siting, they must provide public health and safety justifications in their zoning ordinances if they intend to exclude livestock operations or restrict the size of operations in an agriculture zoning district.

When is a Permit Required?

Managing the terms of pre-existing permits within the context of the new siting requirements presents challenges. Prior CUP terms often vary from the siting standards and it becomes difficult to modify existing permits without converting them to the new siting ordinance conditions.

During the six month period after ATCP 51 went into effect, counties and towns had the option to regulate producers according to the state standards, even if their ordinances had not yet been modified to incorporate ATCP 51. Confusion over which authority could be used to regulate was reported in a few instances.

Linking numerous related operations under one permit may be required in order to comply with the siting law. Determining if multiple farms meet the related facility definition is expanding the reach of local regulation. In the first instance, an operator is responsible for correctly assessing which sites must be included in the application. If it turns out that the required sites are not all included, this will delay the application as the operator works to supplement the application with new maps and worksheets.

Wisconsin Pollution Discharge Elimination System (WPDES) Permits

Confusion over how DNR WPDES permits play into a siting application does exist. Substituting a WPDES permit for the applicable siting application worksheets is an option for producers, not a requirement. When a producer does submit a WPDES permit with a siting application, another set of questions arises. The majority of WPDES permits are written differently and determining which documentation is necessary can be difficult. Potential changes by the DNR when re-issuing a permit may make the worksheet substitution undesirable.

Vested Rights

The right of producers to expand their operation based on authority given prior to enactment of a local siting ordinance has perplexed some communities. Some producers have received building permits approving the construction of new structures or obtained vested rights through other authorities. This may allow a producer to build structures without the rest of the operation coming into compliance with standards required by the new siting ordinance. The WCA obtained a legal review of this issue and disseminated a memo discussing this topic.

Impact on the Ability to Regulate Development in Planned Urban Expansion Areas

There may be difficulties for a city wishing to exclude new and expanding livestock operations from areas where the city is likely to expand. As part of Smart Growth planning, cities develop a plan to expand their borders and urban services. To accommodate future expansions, cities have sometimes requested that towns restrict farm construction in the extraterritorial planning area that will likely be annexed and developed.

The siting law does not allow the exclusion of livestock operations unless the decision is based on public health and safety or, unless the land is zoned non-agricultural. It is difficult to pinpoint a health and safety justification to exclude livestock facilities from planned urban expansion areas. If the town rezones the area as rural residential or other non-agricultural zone, it may avoid the restrictions imposed by the siting law. However, the land in this zone will not be eligible for EAZ. If the EAZ status is lost, residents in the newly zoned area may 1) lose tax credits, and 2) be subject to assessments or city improvements (if a city builds a road or runs sewer past a property, the landowner pays assessments). In addition, conversion of the zone to a non-agricultural land use classification is likely to accelerate development pressure.

Determining Animal Units on Existing Operations

There is a reliance on producers to contact local governments when they expand beyond an existing permit threshold. Many officials are frustrated by the uncertainties faced when determining the number of animals at an operation prior to adoption of a siting ordinance. Even if facilities have pre-existing permits, these permits do not specify the maximum number animal units allowed. Local governments must try to determine if these facilities will exceed their permits by imputing animal units based on housing. Interest was expressed in obtaining premise identification information to better track expansions.

Siting Applications

The limited number of applications makes it difficult to draw conclusions about local governments'

ability to review applications and meet the required timelines. The department did make policy statements on the following issues that were brought to a head during review of local applications.

- **Completeness determination** – Delaying a decision on the completeness determination stalls the application process. The department wrote and distributed a newsletter explaining how to decide if an application is complete.
- **Area map** – When the rule was developed the intent was that an applicant could use a standard USGS quad map for producing the required area map. Thus the rule requires the area map show 10 foot elevation intervals. In certain parts of the state the USGS maps are only detailed to 20 foot elevations intervals due to steep topography. It was determined that the most detailed USGS maps available are acceptable for developing an area map.
- **Site map** – The department stands behind the requirement for the site map to show two foot elevation intervals. This level of detail is standard for engineering surveys. It is needed because some permit reviewers may never set foot on the facility and will rely on the map to determine the impact of conservation practices. Some applicants will need survey work to produce the site map.
- **Monitoring** – The ability to impose additional conditions on a siting permit to further regulate an operation is an issue that may be addressed on appeal. Justifications for extra conditions are deemed necessary to monitor compliance with permit requirements. Authorities under other state and local laws are being claimed for imposing conditions that allow for groundwater pollution monitoring.

Section 5

Evaluation of the Siting Standards

Animal Units

The department has tried to maintain consistency in the animal unit conversions used in ATCP 51 and NR 243, DNR's permit program for confined animal feeding operations. Specifically, staff worked with DNR to ensure that one conversion was used for turkeys, and no new standard was created for poults. With revisions to NR 243 soon to take effect, ATCP 51 will not have systems for converting animal units that mirror NR 243.

Odor Management

Local governments are only required to notify the department of permits granted or denied; therefore the department is not fully aware of what odor mitigation techniques are being considered by producers applying for siting permits. The three approved applications had minimal odor controls installed:

- Central Sands Dairy – An odor score of 671 (500 is needed to pass). The producer measured odor impacts from scraping freestall barns, manure stacks and long term waste storage. In this case neighbors are all further than 1,500 feet from the facilities structures, so no odor control practices were necessary. An advanced odor management plan was not written.
- Larson Acres – An odor score of 823. Odors from a slatted floor dairy facility were measured. An advanced odor management plan was not written.
- Hoard's Dairyman – Exempt. The expansion was less than 1,000 animal units.

Waste and Nutrient Management

Nutrient management plans are not always required by siting. Local governments that grandfathered thresholds below 500 animal units cannot require the nutrient management checklist (Worksheet 3, Part C) for applicants under 500 AUs unless the applicant does not have an adequate land base for manure applications that meets the ratio in Worksheet 3, Part B. In addition, the siting law does not mandate that a nutrient management plan be developed when a waste storage facility is built. Many applicants would likely have been required to develop a nutrient management plan under existing county manure storage ordinances.

Waste Storage Facilities

The majority of counties have manure storage ordinances containing criteria similar to the waste storage standard. Only two notable concerns have been raised:

- Sand settling lanes – When the rule was developed, few of these structures were installed in the state. Now this practice is more commonly used to recover sand bedding on dairy farms. The department issued a policy statement explaining how sand settling lanes should be considered for the waste storage and odor standards.
- No storage – Determining the volume of manure generated on farms that do not have a manure storage facility is more complex than for those with storage. The siting law does not require that an operator have manure storage facilities as a condition for a permit. All the short term collection locations and the frequency of hauling need to be accounted for.

Runoff Management

Similar to the waste storage facility standard, the runoff requirements of ATCP 51 are familiar to most farmers. However, some applicants have not fully realized that they need to bring their existing animal lots into compliance with the requirements of ATCP 51 when applying for a siting permit.

Section 6 **Future Trends and Proposed Improvements**

Questions regarding ordinance administration responsibilities and interpretations of the rule will continue for quite some time. It is anticipated that as more ordinances are adopted and new applications filed, questions will continue.

The relationship between new livestock siting ordinances, existing manure storage ordinances and other local ordinances is a source of potential conflict. Local livestock regulations enacted to enforce the performance standards in NR 151 or other state laws must acknowledge limitations imposed by the siting law.

Protection of groundwater and prevention of well contamination provides an example of how local initiatives may conflict with siting. An argument is being made that the criteria in the Natural Resources Conservation Service's (NRCS) Nutrient Management Standard 590 is not adequate for groundwater protection. Some feel additional restrictions are necessary to protect public health and safety. This argument does carry some weight but it is difficult for local governments to prove that more stringent standards are justifiable. This is because existing groundwater contamination research does not provide precise conclusions. If a local government includes additional groundwater restrictions without adequate scientific findings of fact, either in its ordinance or as part of a permit condition, it opens the door to a challenge.

Proposed Department Assistance

The department does not have authority to approve or deny local ordinances, including those with more stringent standards. Often DATCP is not aware of ordinance development activities until after an enacted ordinance is filed with the department. Currently, department staff review enacted ordinances for compliance with the siting law and advise the local government of any inconsistencies. Rather than wait until after ordinance adoption, department staff can offer assistance to help local governments develop ordinances. Answering questions and providing detailed review of ordinance provisions is a service available to local governments.

A greater need for department staff to assist local governments with rule implementation challenges is

expected. Fielding questions and providing training will continue to be an important activity. Continuing with our outreach effort, the department intends to seek opportunities to educate both regulators and producers about how to meet the siting standards, and the process for obtaining a permit.

Strategy for Collecting Ordinances and Applications

All the counties (zoning and/or LCD) have been contacted about their intent to develop an ordinance. The department has contacted numerous towns with zoning ordinances that previously required a conditional use permit for livestock facilities, and those with exclusive agricultural zoning districts. Department staff will continue to work with towns to verify ordinance adoption, especially in locations where the county will not be adopting a siting ordinance.

Proposed Improvements to the Odor Standard

The Conservation Innovation Grant (CIG), Wisconsin's Dairy and Livestock Air Emission/Odor Project, is well underway. The department has signed contracts with six producers selected from Clark, Dunn, Kewaunee, Manitowoc, Monroe, and Waupaca Counties. The contracts will provide approximately \$360,000 in funds for installation of the following practices designed to reduce air emissions and odors from the livestock operations: anaerobic manure digesters, geo-textile manure storage covers, animal lot improvements, solids separation and aeration. Landowners will contribute about \$280,000 to these projects.

Field work began in October 2006 and will continue through the summer of 2008 to collect two full seasons of data. Odor and air emission samples will be taken on the six farms, two of which will be tested five times each, and the remainder three times each. Two of the farms are also part of a national USDA Agricultural Research Station ammonia emissions study. The empirical data gathered should provide insight into agricultural odors and ways to reduce them. Final results and conclusions will not be available until September, 2008.

Proposed Improvements to the Waste Storage Facilities Standard

- Differentiate composting from waste storage: Composting structures (barns and other facilities) are considered manure storage in ATCP 51. There are instances when it may be acceptable to design a composting facility less stringently than a manure storage facility. This determination must be based on the ratio of manure to other components of the compost.
- Incorporate the revised NRCS Standard 360 Closure of Waste Impoundments: A minor revision was made to Standard 360 to clarify and make terms consistent with related technical standards.

Proposed Improvements to the Runoff Management Standard

- Through the Standards Oversight Council process, the NRCS is developing technical criteria for designing systems to deal with feed storage leachate. It is anticipated that the new leachate and additional milking center wastewater treatment criteria will be incorporated into the NRCS Standard 629 Waste Treatment. After Standard 629 is revised to include the leachate criteria, the department should consider citing the standard in ATCP 51.20.
- Incorporate the revised NRCS Standard 635 Wastewater Treatment Strip: The standard was revised in Feb. 2007 to clarify the use of prefabricated tanks for manure and/or wastewater.

Other Proposed Improvements to the Rule

- Completeness determination: Revise the text in ATCP 51.30(5) to clarify the process. It should be clear that using the completeness determination to delay the application process is not acceptable. Similar language could be inserted in 51.32.
- Area map: Change the 10 foot elevation requirement to 20 feet in Appendix A (p. 390-17 section 9), as discussed in Section 4 of this report.

Measures to Assess Effect of Improvements

The department will continue to track implementation challenges. The type and number of issues raised by stakeholders will be used to measure levels of conflict, and as guidance for department actions. Measuring ordinance compliance with the law will continue to be checked by department staff. Suggestions for improvements will be communicated to local governments. Other policy decisions will likewise be expressed to the relevant stakeholders.

Appendix A

Acronyms

ATCP 51 Wis. Admin. Code Livestock Facility Siting
AU – Animal unit
CUP – conditional use permit
DATCP – Department of Agriculture, Trade and Consumer Protection
DNR – Department of Natural Resources
EAZ – Exclusive Agricultural Zoning
L(W)CD – Land (and Water) Conservation Department
LWCB – Land and Water Conservation board
NR 151 Wis. Admin. Code, Runoff Management
NR 243 Wis. Admin. Code, Animal Feeding Operations
NRCS – USDA Natural Resources Conservation Service
PDPW – Professional Dairy Producers of Wisconsin
USDA – United States Department of Agriculture
UWEX – University of Wisconsin Extension
WCA – Wisconsin Counties Association
WCCA – Wisconsin County Code Administrators
WPDES – Wisconsin Pollution Discharge Elimination System
WTA – Wisconsin Towns Association